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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ALVIN HENNINGTON, JR., Plaintiff, v. VA SAN DIEGO HEALTHCARE SYSTEM, Defendant.	Case No. '08 CV 0883 WQH AJB EX PARTE APPLICATION FOR AN ORDER ESTABLISHING TIME FOR UNITED STATES TO RESPOND TO COMPLAINT

Pursuant to Fed. R. Civ. P. 6(b)(1), it is requested that the Court issue an order specifying the time for the United States, by and through the Department of Veterans Affairs ("VA") (named herein as "VA San Diego Healthcare System"), to respond to the Complaint filed in this action, which was removed from state court on May 19, 2008.[1] This action arises under the Federal Tort Claims Act, Title 28, U.S.C. §§ 1346(b), 2671, et. seq. Ordinarily, in an action originally filed in United States District Court against the United States or its agencies, the time for response by the United States is set forth in Fed R. Civ. P. 12(a). That rule affords "60 days after service upon the United States Attorney . . ." within which to respond to the complaint, as opposed to the 20 days generally afforded to non-federal defendants under the Rule.

After removal of a state court action to the district court, a defendant ordinarily needs to respond within the longest of the following periods:

[1] Such an order is authorized under Federal Rule of Civil Procedure 6(b)(1), which provides discretionary authority to enlarge time "with or without motion or notice. . . ." Authority to enlarge time naturally encompasses the power to designate the proper time for response to a complaint.

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(A) 20 days after receiving – through service or otherwise – a copy of the initial pleading setting forth the claim for relief;

(B) 20 days after being served with the summons for an initial pleading on file at the time of service; or

(C) 5 days after the notice of removal is filed.

Fed. R. Civ. P. 81(c).

Rule 81(c) does not distinguish between cases brought against federal entities and those brought against non-federal defendants. Accordingly, in order to clarify the time to respond to the Plaintiff's Complaint, and to ensure that the VA and the United States will be able to utilize the 60 days provided by Rule 12 to prepare a response, it is requested that the Court issue an order establishing that the VA and the United States shall have 60 days from the date of removal to respond to Plaintiff's Complaint.

Respectfully Submitted,

Dated: May 19, 2008

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